

If I repeat an earlier question, I am sorry. I am wondering, what Delegate Henderson's amendment does that is not already provided by section 7 since he amended his amendment?

THE CHAIRMAN: Section 5 pertains to criminal cases; section 7 to civil cases.

Delegate Johnson.

DELEGATE JOHNSON: Excuse me, I thought Judge Henderson moved down to section 7 for the purpose of his amendment.

THE CHAIRMAN: Not yet. He has another one.

DELEGATE JOHNSON: My mistake.

Delegate Weidemeyer.

DELEGATE WEIDEMEYER: I would like to ask Delegate Henderson if this amendment were adopted for application to district courts, in your opinion, would that foreclose the defendant's right to a jury of twelve and a unanimous verdict, and would it foreclose under those circumstances his election to take his case to the superior court where he would be guaranteed a trial and unanimous verdict by a jury of twelve?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I should think if the constitution permits a six-man jury in the district court that that would be the jury to which he is entitled and the only jury to which he is entitled.

That would be the very purpose, I think, because in many instances now, as we know, when we had these magistrates who were in many cases laymen and no more than justices of the peace before the movement to set up People's Courts came about, it was really necessary to take these appeals and to give the accused every right to get to the higher level as soon as possible, either by electing a jury trial, or an appeal, and then a trial *de novo*, which was a pure duplication.

Now that we are setting this up as a full-scale court and their rights are protected and they are entitled to counsel, I see no reason why we cannot have a final trial and not allow an appeal to the higher court merely for the purpose of trying the case over again before a different jury.

THE CHAIRMAN: Delegate Weidemeyer, do you have another question?

DELEGATE WEIDEMEYER: I was wondering whether Delegate Henderson would agree to an amendment to this amendment

to provide that any defendant would have a right to elect a jury of 12, if that is what he desired.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: That should be left to the legislature as to what they will work out. It is entirely up to them.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: I rise to respectfully urge that you reject this amendment. In the first place, any comparison to section 7, civil cases, is like comparing apples to oranges.

There is an entirely different concept and philosophy with respect to the trial of criminal cases and the rights of the accused.

This is what we are talking about. We will come to the civil jury cases later. I urge you not to be misled by that. While we are on this subject, I might say to you we have nowhere mentioned in section 7 a reference to district courts.

I also must call your attention to the fact that in the present status of this judicial code or judicial branch, the language used is that district courts shall have original jurisdiction prescribed by law.

I do not know what that means and I do not see any reason for setting up a special jury system which may or may not apply to this court. I do not think we should work on the principle: a little crime, therefore, a little jury.

I think a person is still entitled to have his rights determined by the traditional twelve people as has always been provided in our constitution and in the federal Constitution. I see no difference in this point than I did last night, or in any further consideration of the idea of less than twelve people to determine the verdict in a criminal case.

An individual's rights are entitled to be preserved. That is what we are intending to do by the majority report of the Committee. We hope that you will reject this amendment.

THE CHAIRMAN: Is there any further discussion?

DELEGATE MARION: Mr. Chairman.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: Because of the questions Delegate Weidemeyer asked Delegate Henderson, I had a couple of questions